IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 445 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NENARAM PANCHARAM VISNOI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 445 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MR SIRAJ GHORI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/06/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner detenu has challenged his detention order dated 31.12.2002 by which

the petitioner is detained under the PASA as "bootlegger". Along with the detention order, he was served with the grounds of detention which are of the same date. In the grounds, there is a reference about one criminal case, which is filed against the petitioner under various sections of Bombay Prohibition Act. The aforesaid detention order is challenged by the petitioner on various grounds.

#. At the time of hearing of this petition, it is submitted by the learned advocate for the petitioner that at the relevant time when the detention order was passed, the petitioner was already in judicial custody, yet, the detention order is passed. It is submitted that the authority has not stated anything as to why it is necessary to detain the petitioner even though he is in judicial custody. Learned advocate for the petitioner has relied upon the decision of the Apex Court in the case of Amritlal and other Vs. Union Government, reported in AIR 2000 SC 3675, wherein the Apex Court in paras 4, 6, and 7 observed as under.:

"4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 CriLJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as

is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

XXXXX XXXXXX XXXXX

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the `likelihood of his moving an application for bail' which is different from `likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

#. After going through the detention order, it is clear that the detaining authority has not stated anything as to why it is necessary to detain the petitioner by way of preventive detention even though the petitioner is in judicial custody. The detaining authority has also not stated that the petitioner may get the bail at any point of time. Except mentioning in the order that the petitioner is in judicial custody, nothing further is stated. If the petitioner is already in judicial custody, the authority was required to give some reasons as to why it is necessary to detain the petitioner by way of preventive detention. In that view of the matter, there is total nonapplication of mind on behalf of the detaining authority. Therefore, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 31.12.2002 is quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)

(pathan)